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Attorneys for Defendants
14 JUNZO SUZUKI AND PAUL MUSASHI SUZUKI

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA
17

18 SHIGE TAKIGUCHI, FUMI NONAKA,
19 MITSUAKI TAKITA, TATSURO SAKAI,
SHIZUKO ISHIMORI, YUKO NAKAMURA,
20 MASAAKI MORIYA, HATSUNE HATANO,
and HIDENAO TAKAMA, Individually and
21 on Behalf of All Others Similarity Situated,

22 Plaintiffs,

23 vs.

24 MRI INTERNATIONAL, INC., EDWIN J.
FUJINAGA, JUNZO SUZUKI, PAUL
MUSASHI SUZUKI, LVT, INC., d/b/a
25 STERLING ESCROW, and DOES 1-500,

26 Defendants.
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CASE NO. 2:13-CV-01183-GMN-VCF

**DEFENDANTS JUNZO SUZUKI'S
AND PAUL SUZUKI'S NOTICE OF
APPLICATION AND APPLICATION
FOR APPROVAL OF JULY 2016
LEGAL FEES AND EXPENSES**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that defendants Junzo Suzuki and Paul Musashi Suzuki hereby apply to this Court for an order directing First Hawaiian Bank, the custodian of funds frozen under the Preliminary Injunction in this action, to transfer to defendants' counsel the sum of \$25,672.70, which constitutes the balance due for work that the firms performed on this matter in July 2016. Good cause exists for the payment of attorney's fees in excess of the \$10,000 monthly limit imposed by the Court on June 30, 2016 because the majority of the balance due was expended in connection with defendants' opposing plaintiffs' motion to compel discovery responses, reviewing deposition transcripts of depositions that plaintiffs noticed, and responding to discovery requests propounded by plaintiffs. But for the motion, depositions, and discovery, all of which were served by plaintiffs, defendants would not have exceeded the Court's \$10,000 monthly limit.

This Application is based on this Notice, the attached Memorandum of Points and Authorities, the concurrently-filed Declaration of Nicolas Morgan, and the exhibits thereto, and the documents on file in this action.

DATED: September 6, 2016

Respectfully submitted,

NICOLAS MORGAN
PAUL HASTINGS LLP

By: /s/ Nicolas Morgan

NICOLAS MORGAN

Attorneys for Defendants
JUNZO SUZUKI AND PAUL MUSASHI
SUZUKI

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants Junzo Suzuki and Paul Musashi Suzuki file this Application to obtain approval from the Court for the payment of legal fees incurred in connection with this action.

On June 30, 2016, the Court issued an order permitting defendants to “pay up to \$10,000 per month for attorney’s fees relating to this litigation only” (“Fee Order”). Dkt. No. 443, at 2. The Fee Order required defendants to file monthly accountings with the court detailing any such expenditures. *See id.* The Fee Order also prohibited defendants from expending any funds in excess of this \$10,000 limit “without prior authorization of the court.” *Id.* But the Court expressed its willingness to approve legal fee expenditures in excess of \$10,000 a month upon a showing of good cause. *See* Dkt. No. 443, at 2.

In July 2016, Paul Hastings, counsel for defendants, incurred \$25,370 in fees related to this action. Approximately \$15,910 of the fees (or 63%) related to successfully opposing plaintiffs’ motion to compel discovery responses, and reviewing transcripts from depositions noticed by plaintiffs for confidential material. The remaining \$9,460 in fees was expended in connection with preparing and reviewing the June 2016 fee application, corresponding with criminal defense counsel, and corresponding with a third party regarding document production issues in response to plaintiffs’ subpoena. Moreover, defendants’ local Nevada counsel incurred \$302.70 in fees and expenses in July 2016 for reviewing related documents filed and or served in this matter.¹

But for the motion to compel discovery responses and review for confidential material, defendants’ fees for July 2016 would not have exceeded the \$10,000 limit imposed by the Court. And if Defendants had stayed within the \$10,000 limit, there would have been no need to prepare this fee application. Accordingly, good cause exists for the Court to approve the expenditure of frozen funds to pay the July 2016 invoices for defendants’ counsel in the amount of \$25,672.70.

¹ In light of the Magistrate Judge’s recommendation concerning defendants’ June 2016 fee application (Dkt. No. 463), defendants are not seeking at this time the payment of fees incurred in July 2016 by the law firm of Damon Key Leong Kupchak Hastert. Defendants, however, reserve the right to seek appropriate relief after the Court determines whether it will adopt the Magistrate Judge’s recommendation.

II. DEFENDANTS' LEGAL FEES AND EXPENSES INCURRED IN JULY 2016

In July 2016, attorneys from Paul Hastings incurred fees totaling \$25,370. *See* Declaration of Nicolas Morgan ("Morgan Decl."), ¶ 2 and Ex. A. Paul Hastings spent a majority of its time performing tasks related to reviewing deposition testimony of Junzo and Paul Suzuki for confidential information. Plaintiffs took these depositions on June 29 and 30 respectively at the United States Embassy in Tokyo, Japan. Following these depositions, Plaintiffs expressed their intention to include portions of the deposition transcripts that were marked confidential in connection with future briefing. Plaintiffs and Paul Hastings engaged in the required meet and confer in an effort to resolve the issue. As part of that meet and confer process, Paul Hastings carefully reviewed each deposition transcript and their related exhibits to determine whether portions of the transcript were confidential pursuant to the protective order entered in this case. *See* Dkt. No. 335. Paul Hastings spent approximately 21.4 hours on these tasks. The bulk of this work was done by Mr. Rotstein, whose hourly rate is discounted from \$550 to \$250 for this matter.

In addition to the tasks related to the review of defendants' depositions, Paul Hastings also spent approximately 17.5 hours opposing plaintiffs' motion to compel supplementary interrogatory responses and performing related legal research. *See* Dkt. No. 452.² In all, Paul Hastings expended 38.9 hours of time related to the defendants' depositions and opposing plaintiffs' motion to compel, for a total of \$15,910. *See id.*, ¶ 3 and Ex. A.

Paul Hastings performed other work in July 2016 related to preparing and reviewing the June 2016 application for approval of legal fees and expenses (Dkt. No. 447), which totaled \$8,420.³ *See* Morgan Decl., ¶ 4 and Ex. A. In addition, Mr. Morgan performed additional negligible tasks by analyzing an SEC order and corresponding with criminal defense counsel and a third-party regarding, among other things, document production issues, which totaled 1.6 hours and \$1,040 in fees. *See id.* Moreover, defendants' local Nevada counsel incurred fees and

² The Court ultimately denied Plaintiffs' motion to compel. *See* Dkt. No. 457.

³ As discussed in Defendants' prior fee application (Dkt. No. 447), Defendants would not have exceeded the court's \$10,000 monthly limit on fees but for the need to respond to Plaintiffs' litigation activity. Had Defendants stayed within the \$10,000 limit, they would not have needed to incur fees to prepare the July fee application.

1 expenses of \$302.70 to review plaintiffs' motion to compel additional discovery responses,
2 deposition transcripts from depositions noticed by plaintiffs, and defendants' motion for release
3 of funds. *See id.*, ¶ 8, Ex. B.

4 In July, Paul Hastings did not perform any work that proactively advanced its defense of
5 plaintiffs' claims. *See* Morgan Decl., ¶ 5. Nearly all of the work that Paul Hastings undertook in
6 July was in response to plaintiffs' activity. But for that response, Paul Hastings would not have
7 exceeded the Court's \$10,000 monthly limit. At this stage of the action, defendants' legal fees at
8 any given moment continue to be largely dependent on plaintiffs' activity level in this litigation.
9 Because Paul Hastings has an ethical responsibility to represent defendants effectively, it must
10 respond and react to plaintiff's efforts, even if the amount of legal fees incurred, as it did for July,
11 exceeds the Court's \$10,000 limit.

12 The fees incurred by Paul Hastings and local Nevada Counsel to defend the Suzukis in
13 this matter are consistent with the amount that defendants originally requested in its Schedule of
14 Anticipated Monthly Costs and Fees (Dkt. No. 439). In response to the Court's May 3, 2016
15 Order (Dkt. No. 424), defendants filed their schedule and requested \$40,000 monthly to pay legal
16 fees incurred in connection with this litigation. *See* Dkt. No. 439, at 2. Plaintiffs challenged this
17 amount as "beyond unreasonable." Dkt. No. 440, at 4. Nonetheless, they acknowledged that the
18 Suzukis have a "right to mount as vigorous a defense as they're able to do within their means."
19 *Id.*, at 5. But plaintiffs, in opposing defendants' request, apparently failed to appreciate their
20 integral role in determining the size of defendants' monthly fees. Indeed, the existence of a
21 monthly fee limit could incentivize a plaintiff to increase its litigation activity in an effort to
22 steamroll a defendant into running up legal costs, without regard to defendant's ability to pay.

23 As the July 2016 billing records indicate, defendants took great pains to operate within the
24 \$10,000 budget imposed by the Court. Nonetheless, plaintiffs, in pursuing their claims, required
25 defendants to incur additional, reasonable and necessary fees and expenses in connection with
26 tasks related to depositions, opposing plaintiff's motion to compel, and responding to plaintiffs'
27 subpoenas. Defendants could not avoid the overage of \$15,672.70 in fees and expenses incurred
28

1 in connection with the depositions, motion to compel, and third-party subpoena—affirmative acts
2 initiated by the plaintiffs.

3 Defendants have submitted detailed invoices and summaries that describe the nature of the
4 services rendered and the billing rate of the individual performing the task. *See* Morgan Decl., ¶¶
5 2 and 8, Exs. A and B. These invoices serve two purposes. First, they constitute the monthly
6 accounting required in the Fee Order detailing the expenditure of the approved attorney's fees of
7 \$10,000 per month. *See* Dkt. No. 443, at 2. Second, as to the additional \$15,672.70 in fees and
8 expenses incurred in July 2016, the invoices provide the Court with the comprehensive billing
9 information that it will need to evaluate this request for additional legal fees and expenses.

10 **III. DEFENDANTS' LEGAL FEES AND EXPENSES ARE REASONABLE**

11 Nicolas Morgan, now a partner at Paul Hastings, is the lead attorney representing
12 defendants in this action. For this matter, he had discounted his standard Zaccaro Morgan hourly
13 rate of \$795 to \$650, and will honor this discounted rate through the conclusion of this action
14 even though his normal Paul Hastings hourly rate is \$1,100. *See* Morgan Decl., ¶ 6, Ex. A.
15 Moreover, Paul Hastings will honor Zaccaro Morgan's lower rates for each attorney staffed on
16 this matter. Paul Georgeson, a partner at McDonald Carano Wilson, is serving as defendants'
17 local counsel in this matter. Mr. Georgeson's billing rate is \$400 per hour. *See id.*, ¶ 8, Ex. B.
18 These rates are reasonable in light of the claims asserted and the fact that plaintiffs have brought a
19 class action. *See id.*, ¶ 9. Mr. Morgan strived to staff this matter as efficiently as possible, given
20 the level of skill and experience required for the various tasks undertaken by Paul Hastings. *See*
21 Morgan Decl., ¶ 7. Based on these factors, the fees and expenses incurred by Paul Hastings and
22 McDonald Carano Wilson in July 2016 were reasonable.

23 **IV. CONCLUSION**

24 For the foregoing reasons, defendants respectfully request that the Court issue an order
25 directing First Hawaiian Bank, the custodian of funds frozen under the Preliminary Injunction, to
26 transfer to (1) Paul Hastings the sum of \$25,370, and (2) McDonald Carano Wilson the sum of
27 \$302.70, which constitute the balance due for work that the firms performed on this matter in July
28 2016.

1 DATED: September 6, 2016

Respectfully submitted,

2 NICOLAS MORGAN
3 PAUL HASTINGS LLP

4
5 By: /s/ Nicolas Morgan
6 NICOLAS MORGAN

7 Attorneys for Defendants
8 JUNZO SUZUKI AND PAUL MUSASHI
9 SUZUKI
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2016, I filed the foregoing document using the Court's CM/ECF system, which will send notification of such filing to all counsel of record:

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/s/ Nicolas Morgan

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